IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4824 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DILIPKUMAR BABUBHAI BAROT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4824 of 2001

MR BP GUPTA for Petitioner No. 1

MR PREMAL JOSHI, AGP for Respondent No. 1-4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/08/2001

ORAL JUDGEMENT

#. Rule. Mr.Joshi, learned AGP waives service of rule for the respondents. By consent of the parties, the matter is taken up for final hearing today.

#. By this petition, the petitioner has prayed for necessary directions against respondent - State to give him compassionate appointment. The case of the petitioner is that, his father died on 10.4.1999 while he was in service. He was serving on the post of Police Constable. After his death, the mother of the petitioner gave an application for giving appointment to the present petitioner on the compassionate ground. The said application was rejected by respondent No.2 by order dated 9.12.1999 on the ground that monthly income of the family is more than Rs.2500/-. The said order is produced at Annexure-C which is at page 17. As per the said order, monthly income of the family of the deceased is Rs.2829/- and therefore, it is more than Rs.2500/- and on that ground the application for compassionate appointment was rejected.

#. So far as the income of the family pension is concerned, this Court has taken the view in Special Civil Application No.11020 of 1993 in the case of Dilipainh B Rathod Vs. State of Gujarat that while considering the total income of the family of the deceased, income of the pension is not required to be taken into consideration. In para 3 it has been observed by this Court as under :

"Learned counsel for the petitioner has argued that while computing the monthly income for the purpose of examining the eligibility for seeking appointment on compassionate grounds, the family pension cannot be included and the appointment on compassionate grounds cannot be denied on the ground of receipt of family pension. To buttress his argument, the learned counsel for the petitioner has placed reliance on a decision of this Court on the case of C.B.Maru V Dhanduka Nagar Panchayat, reported in 1993(2) GLH 822 and yet another decision of this Court in the case of Manubhai Gothabhai Desai V State of Gujarat and ors. reported in 1998(1) GLH (UJ) 23. In C.B.Maru's case (supra), this Court while placing reliance in the case of Smt.Phoolwati Vs. Union of India and ors, reported in AIR 1991 SC 469 has taken the view that merely because the widow of the deceased employee was entitled to some retiral benefits, that by itself can never be made ground to refuse appointment to the son of the deceased employee on compassionate grounds. In that case, the widow of the deceased employee was getting a family pension of Rs.645/- per month and her husband had died on 15th October,

1990. In the case of C.B.Maru (supra) the other details of income regarding Dearness Allowance, Medical Allowance etc. had not been given, but looking to the amount of family pension of Rs.645/-, it is obvious that if the Dearness Allowance, and Medical Allowance had been taken into consideration, the income may have exceeded Rs.1000/-. In the present case, the father of the petitioner had died in April, 1991 and, in the case of C.B.Maru (supra) the date of the death of deceased is October 1990 and therefore, there is hardly a difference of about six months in the date of death. Even if 505 Dearness Allowance is added to Rs.645/-, it would come to Rs.645/- + Rs.322.50 i.e. Rs.967.50/-, and to that, even if the Medical Allowance of Rs.75/- is added or even Rs.50/-, it would exceed Rs.1000/-. In any case, the fact remains that this Court has taken the view in the case of C.B.Maru that appointment on compassionate grounds cannot be denied on the ground of receipt of retiral benefits including the amount of family pension. In another case of Manubhai Gothabhai Desai (supra) this Court while placing reliance on C.B.Maru's case (supra) has categorically observed that while computing the income of the family, the amount of pension ought not to have been considered. In this view of the matter, there remains no scope to sustain the stand taken by the respondents to take the monthly income of the family in the present case to be more than Rs.1000/- merely because the widow i.e. petitioner's mother is getting Rs.450/- and the total income of the pension is Rs.908/-. If the income of the pension is not to be included as has been held by this Court in the cases aforesaid, the monthly income of the petitioner's family would certainly come out to be less than Rs.1000/- and therefore, this Court has no hesitation in holding that the stand taken by the respondents and the denial of the consideration of the petitioner's case for appointment on compassionate grounds as has been taken by the respondents and conveyed to the petitioner is not at all tenable in eye of law. On such grounds, the petitioner's application could not be rejected for appointment on compassionate grounds. The communication sent to the petitioner as contained in Annexure `A' dated 9.6.1992 rejecting his application is, therefore, set aside. The respondents are directed to

> consider the petitioner's application for appointment on compassionate grounds in accordance with law and in doing so, the appointment shall not be denied to the petitioner on the ground that the monthly income of the family exceeds Rs.1000/-. The respondents are directed to take a decision on the petitioner's application for appointment on compassionate grounds, at the earliest possible opportunity and issue appropriate orders in accordance with law within a shortest possible period, but in no case, later than a period of one month from the date of copy of this order is served upon the Respondent authority. This Special Civil Application is accordingly allowed and the Rule is made absolute in the terms aforesaid. It would be open for the petitioner to serve the certified copy of this order and for that purpose, direct service is permitted."

#. Therefore, naturally while deciding the question of compassionate appointment and considering the income criteria as per the aforesaid order of this court, income of family pension is not required to be taken into consideration. Therefore, the department has committed an error by including the pension income while deciding the question of income of the family of the deceased.

#. Under these circumstances, the petition is required to be allowed and the matter is required to be sent back to the respondent authority to reconsider the case of the petitioner for appointment on compassionate ground in accordance with law. The respondent authority is directed to dispose of the application of the petitioner for appointment on compassionate ground as early as possible and in any case on or before 30.10.2001.

#. The petitioner is also occupying the quarter which the deceased employee was occupying. The petitioner has given undertaking to the effect that the quarter in question will be vacated on or before 25/11/2001. The said undertaking is taken on record of the case. In view of the aforesaid undertaking, the petitioner is granted time to vacate the quarter in question upto 25/11/2001. The petitioner will have to vacate the quarter along with his family members, by the aforesaid date. Till the quarter is vacated, the petitioner is directed to pay the amount which he was paying towards the rent of the quarter. Mr.Gupta states that the petitioner is paying the rent which was paid by his father when he was alive and will continue to pay the same.

#. Accordingly, the petition stands disposed of with the direction to decide the question of compassionate appointment and the petitioner will vacate the quarter in question on or before 25/11/2001. Mr.Gupta states that the petitioner will abide by the aforesaid undertaking. In case, the application for compassionate appointment is decided in favour of the petitioner, the authority may decide on its own the question whether the quarter is required to be allotted to the petitioner or not. This Court has not expressed any opinion on this point one way or other. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J)

(pathan)